



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 5282-99

11 February 2000

MAJ [REDACTED] USMC

Dear Major [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 12 August 1999, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division, dated 8 September 1999, copies of which are attached. They also considered your rebuttal letter dated 30 August 1999 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. They were unable to find that your reporting senior erred by indicating his observation of your performance was "frequent," or that your reviewing officer erred by indicating that he had sufficient opportunity to observe you, noting that their observation need not be direct. They observed you are free to communicate with future selection boards to ensure they are aware of the geographical separation between you and your fitness reporting officials, if you feel they might not know of this otherwise. Since the Board found no defect in your performance record, they had no basis to strike your failures by the Fiscal Year 2000 and 2001 Lieutenant Colonel Selection Boards. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

5282-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

1610
IN REPLY REFER TO:
MMER/PERB
12 AUG 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

Ref: (a) Major [REDACTED]'s DD Form 149 of 28 Apr 99
(b) MCO P1610.7 C w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 29 July 1999 to consider Major [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 920718 to 921031 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is inaccurate and fails to comply with established performance evaluation policy. It is his belief that Item 18 (observation) was incorrectly marked "frequent", when geographical separation from the Reporting Senior precluded anything other than extremely limited interaction. The petitioner also charges that the Reviewing Officer did not observe him and had no basis upon which to formulate a meaningful evaluation. To support his appeal, the petitioner furnishes his own detailed statement and provides documentation which he believes will support his arguments.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. At the outset, the Board emphasizes that the petitioner's belief that "not observed" reports would have been appropriate in this situation is totally without merit. It is, and has been, well known that individuals occupying the billet of "Defense Counsel" are reported on by the respective "Regional Defense Counsel." As such, their geographic separation/distance is recognized. In this regard, the Board discerns absolutely no error or injustice.

b. The petitioner acknowledges some sort of periodic contact with the Reporting Senior (telephonic and electronic). His comments and documentation do not disprove his contact was not "frequent" enough to warrant the rendered fitness report. The Board concludes that the Reporting Senior's evaluation comments

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[REDACTED] USMC

are well within the spirit and intent of paragraph 4007 of reference (b). Only if Lieutenant Colonel [REDACTED] was not able to accomplish an observed report did he have to make a mandatory comment. This was apparently not the case in this situation.

c. Contrary to the petitioner's argument regarding paragraph 4009 of reference (b), Reviewing Officers are required to make a mandatory comment if there was insufficient observation for an evaluation. The very fact that an observed report was submitted negated the requirement for such a comment.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Major [REDACTED]'s official military record.

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

5282-99

IN REPLY REFER TO:

1600

MMOA-4

8 Sep 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR MAJ [REDACTED]
[REDACTED] SMC

Ref: (a) MMER Request for Advisory Opinion in the case of
Major [REDACTED] SMC
of 1 Sep 99

1. Recommend disapproval of Major [REDACTED] request for removal of his failure of selection.
2. Per the reference, we reviewed Major [REDACTED] record and petition. Major [REDACTED] failed selection on the FY00 USMC Lieutenant Colonel Selection Board. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Annual fitness report of 920718 to 921031. Major [REDACTED] requests removal of his failure of selection.
3. In our opinion, Major [REDACTED] record as it appeared before the Board was complete and accurate, and provided a fair assessment of Major [REDACTED] performance. The unfavorable PERB action does nothing to change the competitiveness of the record. Therefore, we recommend disapproval of Major [REDACTED] request for removal of his failure of selection.
4. Point of contact is Lieutenant Colonel [REDACTED]

[REDACTED]
Lieutenant Colonel, U.S. Marine Corps
Head, Officer Counseling and
Evaluation Section
Officer Assignments Branch
Personnel Management Division